



NOTARY NOTES

Newsletter of Licensing Division
North Dakota Secretary of State's Office
Alvin A. Jaeger, Secretary Of State

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Greetings!

By law, a notary public is an Officer of the State, which is a position of trust and requires the highest degree of integrity. Therefore, a notary must never take for granted the duties he or she performs. It is not just a meaningless function. It is much more than that.

Therefore, I urge each notary to always remember the following oath they swore to before a notary public (who then completed a jurat) when he or she applied to become commissioned as a notary public.

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God."

The observance of the above oath is unconditionally essential when a notary performs notarial functions. It is a personal commitment not to be taken lightly. Everyone depends on you. You have a position of trust and responsibility. Do it well and with integrity.

Al Jaeger
Secretary of State

Answers To Questions Most Asked By Notary Publics

1. A notary's seal/stamp should not obscure text nor overlap any written or typed text. The impression of the seal/stamp on the document must be clear and legible.
2. To be legal, every notarization must contain a venue (state and county where the notarial act is being performed) and either an acknowledgement or a jurat. If this information is not on the document being notarized, the notary is responsible for either writing or typing this information on the document.
3. It is illegal for a notary to perform notarial duties prior to the starting date of his or her commission or beyond the commission's expiration date. The commission begins at 12:00 a.m. on the commencement date and expires at midnight on the commission's expiration date.
4. When renewing or applying for a new commission, an impression of the notary's seal/stamp must be submitted to the Secretary of State's office on or before the date listed on the authorization to purchase. The law only allows the Secretary of State to issue the commission after the impression of the seal/stamp has been filed with the office.
5. Until the notary receives his or her commission, it is illegal for them to perform any notarial act. Therefore, the timely filing of the seal's impression will allow the Secretary of State's office to issue the new commission to the notary before the expiration of the notary's current commission. It is usually mailed within one or two business days after the impression is received.
6. It is important that impressions made by a notary's seal/stamp are readable. If a notary's embossed impressions are not readable, the notary should contact the Secretary of State's office to obtain an authorization to purchase a new notary seal/stamp. When using a stamp, it should be well inked.
7. Approximately two months before the expiration of a notary's commission, the Secretary of State's office will send out a renewal packet. At the same time or even before, private surety bond vendors, who have purchased a list under the state's open records law, will also be sending out renewal packets in an attempt to secure the notary's bond business. While a notary may choose any vendor for his or her notary bond, please be aware of the difference between the official renewal packet from the Secretary of State's office and the renewal packet received from private vendors over which we have no control. The renewal packet from the Secretary of State's office will be identified as "official mail" in the upper left corner of the envelope.
8. The commission expiration date on the notary's seal/stamp must match the date on the notary's Certificate of Commission and the notary's name must be spelled the same on both. If either is incorrect, the notary should immediately contact the Secretary of State's office. The commission's expiration date is assigned by the Secretary of State and appears on the Certificate of Commission. A notary should not use the date the surety company has listed on its notary bond form.
9. If a notary lists an incorrect commission expiration date, it could invalidate the document being notarized.
10. If a notary's seal/stamp contains the expiration date, it is not necessary for the notary public to list it again anywhere on the document.
11. A notary commission is issued to an individual and not to anyone else. Therefore, even though an employer may have paid for the notary's commission, the notary's seal/stamp must always remain under the direct and exclusive control of the notary throughout the entire time his or her commission is in effect. This applies even if they no longer work for the employer who paid for it.

12. A notary's first obligation is to the law and he or she should not violate it even if directed to do so by an employer.
13. When a notary is commissioned and becomes an officer of the state, it allows him or her to notarize anywhere in the entire State of North Dakota. The venue for the notarial act should always indicate the county where it is physically taking place. For example, if a notary is a resident of Burleigh County, but performs a notarial act in Cass County, he or she must list Cass County in the venue.
14. The law requires the notary's Certificate of Commission be posted in a conspicuous place in his or her office.

Law Changes

The 2005 Legislative Assembly adopted several changes to the Century Code governing notaries public, which are effective July 1, 2005. The following is a brief summary of the changes. A complete updated copy of the law is attached to this newsletter and each notary is encouraged to review it.

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| 44-06-02 | The application fee for a six-year commission was raised from \$25 to \$36. |
| 44-06-13 | It is a criminal infraction for any individual to act as a notary or perform a notarial act without a lawful commission issued by the state in his or her possession. |
| 44-06-13.1 | Added a basis for the revocation of a notary's commission, which states: "Within five years of the date of issuance of a commission or renewal of a commission, the notary is convicted of a criminal offense which the secretary of state determines has a direct bearing upon the notary's ability to serve the public as a notary public." |



Violations

Each notary is encouraged to review the following listing of notary violations that were settled between September 2004 and May 2005. Many of these violations could easily have been avoided if the notary had taken the time, remembered the law, and read carefully the acknowledgment or jurat they were signing. In not doing so, there were significant consequences for the notary. In addition, beyond the authority of the Secretary of State's office, these violations could present personal liability issues for the notary or result in criminal prosecution.

Note: The circumstances surrounding each violation are often different and result in varying penalties even though some of the following abbreviated summaries may appear to be similar in nature. All violations are a matter of public record under the state's open records laws.

September 24, 2004 – Notary violated 44-06-13.1 (3) by notarizing her own signature: prohibited from applying for a notary commission for six months.

November 18, 2004 – Notary violated 44-06-13.1(5) by notarizing a document with an inaccurate date: letter of reprimand.

December 10, 2004 – Notary violated 44-06-13.1(3) by notarizing his own signature: \$150 penalty

December 10, 2004 – Notary violated 44-06-13.1(3) by notarizing his own signature: six-month suspension.

December 13, 2004 – Notary violated 44-06-13.1(1) by notarizing a document not signed in her presence: letter of reprimand.

December 13, 2004 – Notary violated 44-06-12 by listing an incorrect commission expiration date: letter of reprimand.

December 20, 2004 – Notary violated 44-06-13.1(3) by notarizing his own signature: \$75 penalty and three-month suspension.

December 31, 2004 – Notary violated 44-06-14.1 by notarizing prior to receiving his commission: \$50 penalty.

December 13, 2004 – Notary violated 44-06-04.1 by notarizing prior to receiving her commission: cannot re-apply for six months.

December 13, 2004 – Notary violated 44-06-04.1 by notarizing without legally changing her name: letter of reprimand.

February 28, 2005 – Notary violated 44-06-13.1(1) by notarizing a document not signed in her presence: order by default for six years.

January 31, 2005 – Notary violated 44-06-13.1(6) by notarizing a signature that was not an original: \$150 penalty.

January 31, 2005 – Notary violated 44-06-03 by using an unapproved notary seal: letter of reprimand.

February 14, 2005 – Notary violated 44-06-13.1(1) by notarizing a document even though the signature was not in the appropriate place: letter of reprimand.

April 28, 2005 – Notary violated 44-06-04.1 by notarizing a document when she did not have a commission: \$50 penalty and re-apply for a new commission.

April 25, 2005 – Notary violated 44-06-03.1(1) by notarizing a document not signed in her presence: \$400 penalty and three-month suspension.

March 28, 2005 – Notary violated 44-06-13 by notarizing without a commission: cannot apply for notary commission for three years.

May 4, 2005 – Notary violated 44-06-03 by misrepresenting herself on the application by not disclosing felony information: notice of entry of order by default and commission revoked to May 4, 2011.

May 24, 2005 – Notary violated 44-06-03.1(1) by notarizing an unsigned document: \$150 penalty.

Copy Of The Law

A complete copy of the laws, effective July 1, 2005, pertaining to the duties of a notary public is attached as part of this newsletter. Take the time to read them. These are the laws you agreed to faithfully discharge when you executed your Oath of Office.

Notary Notes is published by the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue Dept 108, Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: (800) 352-0867, ext. 8-2901, Fax: (701) 328-1690.

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